No. 04-631

In The Supreme Court of the United States

JOAN WAGNON,
in her official capacity as Secretary,
Kansas Department of Revenue,

Petitioner,

v.

PRAIRIE BAND POTAWATOMI NATION,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

AMICI CURIAE BRIEF OF THE SAC AND FOX NATION OF MISSOURI IN KANSAS AND NEBRASKA, THE IOWA TRIBE OF KANSAS AND NEBRASKA, AND THE KICKAPOO TRIBE OF INDIANS OF THE KICKAPOO RESERVATION IN KANSAS IN SUPPORT OF RESPONDENT PRAIRIE BAND POTAWATOMI NATION

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INTEREST OF *AMICI CURIAE*

In addition to the Prairie Band Potawatomi Nation, the State of Kansas includes three other federally recognized Indian tribes within its borders: (1) The Sac and Fox Nation of Missouri in Kansas and Nebraska, (2) the Iowa Tribe of Kansas and Nebraska, and (3) the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas. As with the Prairie Band, these other three resident Kansas tribes also operate small retail gasoline stations within their Indian country. These other resident Kansas tribes share the Prairie Band's concern for the encroachment by the State of Kansas on their sovereign rights as tribal governments. These other resident Kansas tribes submit this brief in support of Respondent Prairie Band Potawatomi Nation.[1]

SUMMARY OF ARGUMENT

In Indian tax cases, as this Court well knows, a state may only impose a tax whose legal incidence falls on a non-Indian if the balance of federal, state, and tribal interests favors the State and federal law is not to the contrary. *See Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 459 (1995). The Tenth Circuit correctly balanced these interests in finding for the Prairie Band. In addition to interests raised in the briefs filed by and in support of the Prairie Band, the other three resident

[1] No counsel for any party authored this brief in whole or in part and no person or entity, other than *amici curiae* made a monetary contribution to the preparation or submission of this brief. This brief is filed with the written consent of all parties.

Kansas tribes file this brief to highlight two Kansas-specific factors also favoring the Prairie Band in the balancing test.

First, the interest of the State of Kansas is weak and not longstanding with respect to motor fuel taxes that impact the ability of a tribe to impose its own tax. In the early 1990s, the State of Kansas entered tax compacts with each of the four resident tribes. Under the compacts, the State of Kansas agreed to forgo certain excise taxes – including motor fuel taxes – so long as the tribes imposed a comparable tax. These tax compacts were consistent with the State's broader policy of respecting the sovereignty of other governments and avoiding double taxation of motor fuels.[2] Over the objections of the resident Kansas tribes, the State abruptly changed course in 1995, essentially reneged on the compacts, and sought to impose state motor fuel taxes on tribal commerce. The State's relatively recent change in course and disregard for previously recognized tribal taxing power and tribal sovereignty over

[2] These compacts may have also reflected the State's effort to make amends for decades of hostility toward and mistreatment of the resident Indian tribes. Up until then, the State of Kansas had consistently acted on what it perceived "as the best interest of its citizenry and economy, even when such actions undermine[d] tribal sovereignty and self-determination." *See* Melissa A. Rinehart and Kate A. Berry, *Kansas and the Exodus of the Miami Tribe*, ch. 2, p. 45 from *The Tribes and the States: Geographies of Intergovernmental Interaction*, edited by Brad A. Bays and Erin Hogan Fouberg (Rowman & Littlefield Publishers, Inc. 2002) (discussing the history of exploitation and mistreatment of Indian tribes by the State of Kansas). These tax compacts may have been an attempt to remedy some of that past misbehavior. *See United States v. Kagama*, 118 U.S. 375, 384 (1886) ("Because of the local ill feeling, the people of the states where [Indians] are found are often their deadliest enemies.")

tribal commerce weighs in favor of the federal/tribal interests.

Second, the Federal Government has a particularly strong interest favoring the Prairie Band as reflected in the Kansas Act for Admission. That federal statute prohibits the State of Kansas from construing its boundaries to "impair the rights of person or property now pertaining to the Indians of said territory" so long as those rights remain unextinguished by federal treaty. *See* 12 Stat. 127, ch. 20, § 1 (1861). While the right to engage in the sovereign functions of self-government and self-determination through taxation, trading and economic development have not been extinguished by treaty, they have been impaired by the State of Kansas construing its boundaries to include the Prairie Band Potawatomi Nation. The intent of this federal statute was to protect those rights from infringement by the State. But for the State of Kansas treating the Prairie Band as being located within the State's boundaries for tax purposes, the Prairie Band would be considered outside the boundaries and eligible for the state tax exemption for out-of-state deliveries.

In violating the Kansas Act for Admission, the State has effectively nullified the Prairie Band's power to impose its own tax on gasoline sales by a tribally owned, on-reservation gas station. The impairment of tribal rights in violation of the Kansas Act for Admission also weighs in favor of the federal/tribal interests. This Court should affirm the Tenth Circuit based on the balancing test.

ARGUMENT

I. The State's Abandonment of the Tax Compacts Weighs in Favor of the Federal/Tribal Interests

Contrary to positions now taken in its merit brief, the State of Kansas once recognized the sovereignty of the resident Kansas tribes and the inability of the State to impose a motor fuel tax on tribal commerce. In tax compacts entered in the early 1990s, the State relinquished any jurisdiction it may have had to levy and collect excise taxes on tribal commerce so long as the tribes imposed a tax. The State now takes the opposite position. The State's relatively recent change in course and disregard for previously recognized tribal taxing power and tribal sovereignty over tribal commerce reflect a weak State interest.

In 1991, the State of Kansas and the resident Kansas tribes opened negotiations over imposition and collection of state taxes. "Several Indian tribes in Kansas [had] been selling gasoline without collecting or remitting" the state sales tax. Stacy L. Cook, Comment, *Indian Sovereignty: State Tax Collection on Indian Sales to Nontribal Members – States Have a Right Without a Remedy*, 31 Washburn L.J. 130, 138 n.72 (1991). After this Court's decision in *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991), "[s]tate officials immediately entered into negotiations with the four Indian tribes of Kansas." Cook at 138 n.72. The Attorney General for Kansas "wanted to allow the tribes to levy their own taxes, as long as those taxes were only a few cents lower than the state tax." *Id.* Ultimately, the Governor of the State of Kansas entered into tax compacts in which the State would forgo its taxation authority over sales on reservation provided the tribes continued to levy

at least as much tax as they had been imposing on fuel and other items. *See* Tax Compact Between the Sac and Fox Nation of Missouri in Kansas and Nebraska and the Kansas Department of Revenue; Tax Compact Between the Iowa Tribe of Kansas and Nebraska and the Kansas Department of Revenue; Tax Compact Between the Kickapoo Nation and the Kansas Department of Revenue; Tax Compact Between the Prairie Band of Potawatomi Nation and the State of Kansas (attached hereto as Appendix A).

The State of Kansas recognized that the resident Kansas tribes provided significant services and programs funded by tribal taxes that benefitted both tribal and non-tribal persons. These programs and services included construction of roads and bridges on or near the respective reservations, operation of tribal justice systems, operation of substance abuse treatment centers, maintenance of water plants and distribution systems, operation of volunteer fire departments, operation of low-income housing programs, operation of schools, operation of community heritage centers, operation of food distribution programs, and a host of other programs and services benefitting Indians and non-Indians alike in the rural communities in which the tribes resided. *See* Appendix A.

In fact, these tribes still operate many of these and other government programs and functions funded, in part, by tribal motor fuel tax revenue. For example, the Sac and Fox Nation maintains about 33 miles of its own roads and bridges within the Sac and Fox Indian Reservation funded in part with motor fuel tax revenue. The Sac and Fox Nation spends in excess of $50,000 a year of its money to maintain these roads and bridges. The Sac and Fox Nation also uses its fuel tax revenue to support tribal education, housing, police, fire, and capital improvements. The Iowa

Tribe maintains 32.7 miles of its roads (plus other roads) within its reservation at a cost in excess of $180,000 per year. The Iowa Tribe also has its own police force and fire department. The Kickapoo Tribe has built and maintains about 41.5 miles of road within its reservation and also uses fuel tax revenue to support a police department and fire department. Just like states, these resident Kansas tribes (along with the other Indian tribes across the nation) depend on their ability to tax to fund government functions and services that benefit both members and non-members.

In the tax compacts, the State of Kansas also recognized that if the resident Kansas tribes did not fund and operate these programs, the State would likely be forced to offer such programs at its expense. Therefore, the State agreed to refrain from taxing certain transactions so long as the tribes imposed tribal taxes on those same transactions.[3] The resident Kansas tribes would then be able to raise revenue through taxation with which to fund these programs and services (saving the State of Kansas from having to fund these programs itself). The parties viewed this compromise as a fair and equitable way "to eliminate problems which result from tribal and state taxation of the same event or transaction, and to ensure a reasonable competitive balance of sales by vendors on reservations

[3] The Prairie Band, for example, agreed to impose a tribal tax not less than 60% of the state rate. *See* Tax Compact Between the Prairie Band of Potawatomi Nation and the State of Kansas at 2. The tribal taxes helped ease the concern raised by this Court that tribes might "market an exemption from state taxation to persons who would normally do their business elsewhere" if no state tax was imposed. *See Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 155 (1980).

and those off reservations." *See* Tax Compact Between the Prairie Band of Potawatomi Nation and the State of Kansas at 2.

While the tax compacts initially worked well, the State of Kansas abruptly changed course in 1995 and essentially reneged on the compacts. The State amended its motor vehicle fuel taxing scheme and announced its intention to impose its motor fuel taxes on fuel deliveries to Indian reservations within Kansas. *See Sac and Fox Nation of Missouri v. Pierce*, 213 F.3d 566, 569 (10th Cir. 2000). That change led to this litigation.

As evidenced by the cost of the ongoing litigation between the State of Kansas and the Prairie Band, a renewal of the tax compacts entered between the State and the resident Kansas tribes would have been the best resolution. The State's recent reversal of its position recognizing tribal sovereignty and the right of tribes to tax tribal commerce shows just how weak the State interest is in now taxing the tribal commerce at issue. The State's abandonment of the tax compacts weighs in favor of the federal/tribal interests.[4]

[4] The nominal amount of money at issue for the State further highlights the weakness of the State's interest. The potential fuel tax revenues the State of Kansas seeks from the Prairie Band totals only about 0.09% of the state motor fuel taxes collected in 1999 – an extremely small sum.

II. The State's Violation of the Kansas Act for Admission Also Weighs in Favor of the Federal/ Tribal Interests

The Federal Government has a particularly strong interest favoring the Prairie Band as reflected in the Kansas Act for Admission. That federal law prohibits the State of Kansas from construing its boundaries to "impair the rights of person or property now pertaining to the Indians of said territory" so long as those rights remain unextinguished by federal treaty. *See* 12 Stat. 127, ch. 20, § 1 (1861). Despite this limitation, the State of Kansas has construed its boundaries to physically include the Prairie Band Potawatomi Nation for tax purposes. But for the Prairie Band being located within the boundaries of Kansas for tax purposes, the Prairie Band would be considered outside the boundaries and eligible to avail itself of a state tax exemption for the exportation of motor vehicle fuel outside the boundaries of Kansas.

Pursuant to the first proviso of Section 1 of the Kansas Act for Admission into the Union:

> [N]othing contained in the said constitution respecting the boundary of [Kansas] shall be construed to impair the rights of person or property now pertaining to the Indians of said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians. . . .

12 Stat. 127 (1861).[5] Congress required these "disclaimer" clauses to be included in some of the territorial acts,

[5] While the Tenth Circuit in an earlier decision did address Section 1 of the Kansas Act for Admission, it did not address this first proviso. *See Pierce*, 213 F.3d at 576-77. Instead, it examined the second proviso

(Continued on following page)

enabling acts, and constitutions of states "to assure both tribes and the federal government that the territory/state [would] never, without federal consent and/or a treaty modification, interfere with the internal affairs of tribal nations." David E. Wilkins, *Tribal-State Affairs: American States as "Disclaiming" Sovereigns*, ch. 1, p. 2 from The Tribes and the States: Geographies of Intergovernmental Interaction (Rowman & Littlefield Publishers, Inc. 2002). These "disclaimer" clauses "recognized the general principle that Indian territories were beyond the legislative and judicial jurisdiction of state governments." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138, 142 (1984).[6]

"The first enabling act containing an explicit disclaimer clause was the act authorizing Kansas to be admitted to the Union in 1861." Wilkins at 12. "This measure reflected congressional intent to abide by preexisting treaties with Kansas tribes and to remind states of federal supremacy in the field of Indian policy." *Id.* Through these "disclaimer" clauses, the "Indians continued thereafter, as previously, in possession of the lands, and their rights,

which provides that nothing in the constitution will be construed "to include any territory which, by treaty with such Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; . . . " The Tenth Circuit did not address the impairment of Indian rights.

[6] While this Court had indicated that a disclaimer of right and title by a state may have only been a disclaimer of proprietary rather than governmental interest, *see Organized Village of Kake v. Egan*, 369 U.S. 60, 69 (1962), this Court later clarified that disclaimers could not have been only proprietary because there would then have been no need for Congress to enact Public Law 280 allowing states to assume jurisdiction over reservation Indians. *See McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 177-78 (1973).

whatever their nature and extent. . . ." *Missouri, K. & T. Ry. Co. v. Roberts*, 152 U.S. 114, 120 (1894). "Kansas accepted her admission into the family of States on condition that the Indian rights should remain unimpaired. . . ." *The Kansas Indians*, 72 U.S. 737, 756 (1866). In later discussing *The Kansas Indians* case, this Court stated:

> In the cases of the Kansas Indians, 5 Wall. 737, we held that a state, when admitted into the Union, was bound to respect an exemption from taxation which it had previously granted to tribes of Indians within its borders, because, as the court said, the state of Kansas 'accepted this status when she accepted the act admitting her into the Union. Conferring rights and privileges on these Indians cannot affect their situation, which can only be changed by treaty stipulation, or voluntary abandonment of their tribal organization.'

Ward v. Race Horse, 163 U.S. 504, 519 (1896). This Court has construed the first proviso of Section 1 of the Act for Admission to prohibit the impairment of Indian rights.[7]

[7] The Kansas Supreme Court made a similar finding in 1997 by stating:

> Under the 1861 Act for Admission of Kansas into the Union, no personal or property rights that Indians possessed before the State of Kansas was admitted into the Union, or before the Territory of Kansas was organized, can be impaired unless such rights are extinguished by treaty between the United States and the Indians. . . .

In the Application for Tax Exemption of Nina Kaul, 261 Kan. 755, 770 (1997). The next year, though, the Kansas Supreme Court again reviewed the first proviso of Section 1 and upheld the denial of the state fuel tax exemption for deliveries to Indian reservations for individual retailers. *See Kaul v. State Dep't of Revenue*, 266 Kan. 464, 477-78 (1998). In contrast to the case before this Court, the *Kaul* case did not

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These "rights" protected by the Act for Admission include the Prairie Band's right to engage in the sovereign functions of self-government and self-determination through taxation, trading and economic development. The actions of the State of Kansas impair these rights. The Prairie Band cannot continue to sell motor vehicle fuel if both the state and tribal taxes are imposed. The price of motor vehicle fuel will be too high and customers will simply go to non-tribal competitors (who do not pay the double tax). Imposition of the state tax effectively nullifies the Prairie Band's power to impose its own motor fuel tax (and use that tax revenue to pay for roads, bridges, and the like on the Prairie Band Reservation).

These actions also deprive the Prairie Band of a tax exemption under state law. The State of Kansas taxes the "distributor of the first receipt" of motor fuel in Kansas (as opposed to an importer or manufacturer). Kan. Stat. Ann. § 79-3408(c). However, the State of Kansas exempts from taxation a distributor who exports motor vehicle fuel from Kansas to a state, territory, or foreign country outside the boundaries of Kansas:

> No tax is hereby imposed upon or with respect to . . . [t]he sale or delivery of motor-vehicle fuel or special fuel for export from the state of Kansas to any other state or territory or to any foreign country.

Kan. Stat. Ann. § 79-3408(d)(1). But for the state boundary being construed as including the resident Kansas tribes within the State of Kansas for tax purposes, the resident

involve the impairment of tribal rights because no tribal governmental interest was involved.

Kansas tribes would be considered outside the State of Kansas for export purposes and able to use this tax exemption. The loss of this state exemption due to inclusion within the State's boundaries for tax purposes impairs the Prairie Band's right to engage in the sovereign functions of self-government and self-determination through taxation, trading and economic development contrary to a reasonable reading of the first proviso of Section 1 of the Act for Admission.[8]

The State of Kansas has acted in violation of the Act for Admission. Because the Kansas Act for Admission precludes the State of Kansas from impairing the rights of the Prairie Band to self-governance and self-determination, the Federal Government has a strong interest which favors the Prairie Band in the balancing of federal, state, and tribal interests.

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[8] To the extent that language in the Kansas Act for Admission may be regarded as ambiguous, "it is a settled principle of statutory construction that statutes passed for the benefit of dependent Indian tribes are to be liberally construed, with doubtful expressions being resolved in favor of the Indians." *Three Affiliated Tribes*, 467 U.S. at 149. Therefore, any ambiguities in the Kansas Act for Admission should be construed in favor of the Prairie Band. *See Bryan v. Itasca County*, 426 U.S. 373, 392 (1976).

CONCLUSION

The judgment of the Tenth Circuit should be affirmed.

Respectfully submitted,

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APPENDIX A

TAX COMPACT BETWEEN THE SAC AND FOX NATION OF MISSOURI IN KANSAS AND NEBRASKA AND THE KANSAS DEPARTMENT OF REVENUE

This Agreement is made and entered into this 3rd day of January, 1992 by and between the Sac and Fox Nation of Missouri in Kansas and Nebraska (hereinafter referred to as the Sac and Fox Nation) and Department of Revenue of the State of Kansas (hereinafter referred to as the "Department").

WHEREAS, the Sac and Fox Nation exists in a treaty relationship with the United States of America; and

WHEREAS, President Bush on June 14, 1991, issued an American Indian policy statement which reaffirmed the government-to-government relationship between Indian Nation tribes and the Federal Government; and

WHEREAS, Sac and Fox Nation Self-Determination must be based on economic Self-Sufficiency; and

WHEREAS, it is agreed by and between the Sac and Fox Nation and Department that it is mutually beneficial to the parties to cooperate in matters relating to taxation; and

WHEREAS, the Legislature of the State of Kansas has authorized tax collection agreements between the Sac and Fox Nation and Department to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction; and

WHEREAS, the Sac and Fox Nation has enacted tribal government tax laws and is currently collecting

taxes on sales of the following: general merchandise, cigarettes, tobacco products, motor fuels and special fuels; and

WHEREAS, the Sac and Fox Nation provides programs and services which are funded in part from existing tribal taxes which programs and services include the following:

(1) Operation and maintenance of the "Trad-N-Post" smokeshop benefiting both tribal and non-tribal members.

(2) Operation of a Community and Heritage Center benefiting both tribal and non-tribal members.

(3) Construction and maintenance of roadways and bridges benefiting both tribal and non-tribal members.

(4) Maintenance of an independent and tribally-operated water plant and distribution system benefiting both tribal and non-tribal members.

(5) Operation of the Sac and Fox Nation Community Health Representative Transportation Program benefiting both tribal and non-tribal members.

(6) Operation of a Low Income Housing Program benefiting both tribal and non-tribal members.

(7) Operation of educational scholarship programs for tribal members.

(8) Operation of health care assistance programs for tribal members.

(9) Operation of the Sac and Fox nation Alcohol and Substance Abuse Program benefiting both tribal and non-tribal members.

WHEREAS, if many of the above-mentioned programs and services were not provided by the Sac and Fox Nation, Kansas would very likely be called upon to fund and provide the programs and services; and

WHEREAS, the geographic location of the Sac and Fox Nation Reservation is such that it is believed that businesses operated on the Reservation do not compete directly with businesses operated by merchants in surrounding areas and communities.

NOW, THEREFORE, the parties agree as follows:

1. *Definition of Terms.* As used in this agreement, the following terms shall mean the following:

a. "Sac and Fox Nation" means the Sac and Fox Nation of Missouri in Kansas and Nebraska, an Indian tribe recognized by the Congress of the United States of America.

b. "Reservation" means those areas subject to tribal jurisdiction ("Indian Country") as defined by 18 U.S.C. Section 1151.

c. "Excise Tax" means those taxes imposed by the state of Kansas on retail sales (K.S.A. 79-3601 et seq.); cigarettes (K.S.A. 79-3301 et seq.); motor fuels (K.S.A. 79-3401 et seq.); special fuels (K.S.A. 79-3474 et seq.) and tobacco products (K.S.A. 79-3370 et seq.).

2. No excise tax of Kansas or its governmental subdivisions shall be imposed on any transaction occurring on the Sac and Fox Nation Reservation so long as such transaction is subject to a Sac and Fox Nation tax (the "Tribal Tax") imposed thereon which is no less than the following tax amounts:

a.	Motor and Special Fuels	$.04/gal.
b.	Cigarette and Tobacco Products	$.07/pkg.
c.	General Sales	2%
d.	Construction Projects	3.5%

3. A fully executed copy of the enacting resolution of the governing body of the Sac and Fox Nation imposing any such "Tribal Tax" shall be filed with the Department of Revenue.

4. The State of Kansas hereby relinquishes any jurisdiction it and its governmental subdivisions may have to levy and collect Excise Taxes on sales by the Nation or by Merchants on the Sac and Fox Nation Reservation subject to the following conditions:

a. Such merchants are authorized by the Sac and Fox Nation to do business on the Reservation;

b. Such merchants are paying Tribal Taxes to the Sac and Fox Nation;

c. Such excise taxes imposed by the Sac and Fox Nation shall not be less than those specified in Paragraph 2 of this Compact.

5. The Sac and Fox Nation agrees to diligently pursue collection of any Tribal Tax imposed on merchants transacting business on the Reservation.

6. The Sac and Fox Nation agrees to certify on forms provided by the Department that it is collecting the taxes set forth in Paragraph 2. Upon request by the Department, the Sac and Fox Nation shall provide supporting certification documentation at the Department's offices not more than twice a year.

7. In no event shall this Compact be construed to be a waiver of the sovereignty of the Sac and Fox nation or a concession that the State of Kansas has any jurisdiction whatsoever on the Sac and Fox Nation Reservation.

9. This Compact shall be null and void and of no further force or effect if the Congress of the United States or the United States Supreme Court declares that states may not impose excise taxes on transactions involving non-Indians occurring on Indian reservations.

10. This Compact shall be for a term of five (5) years from the effective date hereof, and shall continue until either party seeks modification of the Compact. In that event, either party shall notify the other in writing of such modifications and the parties shall have 180 days to arrive at a mutually agreeable modified compact.

11. This Compact shall be binding and effective only after it has been approved by the Sac and Fox Nation Tribal Council, the Governor, and the Kansas Secretary of Revenue.

Witness our hand and seal this 3rd day of January, 1992.

SAC AND FOX NATION TRIBAL COUNCIL

By: /s/ Sandra Keo
Sandra Keo, Chairperson

By: /s/ Mary (Kay) Hayes
Mary Kay Hayes, Secretary

STATE OF KANSAS

By: /s/ Joan Finney
Joan Finney, Governor

KANSAS DEPARTMENT OF
REVENUE

By: /s/ Mark Beshears
Mark Beshears, Secretary

APPROVED:

/s/ Lance W. Burr
Lance W. Burr, Special Counsel
for Sac and Fox Nation

TAX COMPACT BETWEEN THE IOWA TRIBE OF KANSAS AND NEBRASKA AND THE KANSAS DEPARTMENT OF REVENUE

This Agreement is made and entered into this 19th day of September, 1991 by and between the Iowa Tribe of Kansas and Nebraska (hereinafter "Iowa Tribe") and the Department of Revenue of the State of Kansas (hereinafter "Department").

WHEREAS, it is agreed by and between the Iowa Tribe and Department that it is mutually beneficial to the parties to cooperate in matters relating to taxation; and

WHEREAS, the Legislature of the State of Kansas has authorized tax collection agreements between the Iowa Tribe and Department to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction; and

WHEREAS, the Iowa Tribe reservation comprises approximately sixty (60) square miles surrounded by the states of Kansas, Nebraska and Missouri; and

WHEREAS, the Iowa Tribe has enacted tribal tax laws and is currently collecting taxes on sales of the following: general merchandise, cigarettes, tobacco products, motor fuels and special fuels; and

WHEREAS, the Iowa Tribe provides programs and services which are funded in part from existing tribal taxes which programs and services include the following:

(1) Construction and maintenance of roadways [approximately twenty six (26) miles] and bridges benefiting

both tribal and non-tribal members at a cost of $4.2 million since 1982.

(2) Maintenance of an independent water system benefiting tribal and non-tribal members.

(3) Operation of a fire department benefiting tribal and non-tribal residents of the Reservation and surrounding local communities and areas.

(4) Operation of low income housing benefiting tribal and non-tribal members.

(5) Providing health insurance for employees of businesses operated by the Iowa Tribe.

(6) Providing college scholarships for tribal members graduating from high school [five (5) per year].

(7) Maintaining four (4) cemeteries and providing burial funds for tribal members.

(8) Operating a food distribution program (in lieu of food stamps) for tribal and non-tribal members.

WHEREAS, if many of the above-described programs and services were not provided by the Iowa Tribe, Kansas would very likely be called upon to fund and provide the services; and,

WHEREAS, the geographic location of the Iowa Tribe Reservation is such that it is believed that businesses operated on the Reservation do not compete directly with businesses operated by merchants in surrounding areas and communities.

NOW, THEREFORE, the parties agree as follows:

1. *Definition of Terms.* As used in this agreement, the following terms shall mean the following:

a. "Iowa Tribe" means the Iowa Tribe of Kansas and Nebraska, an Indian tribe recognized by the Congress of the United States.

b. "Reservation" means those areas subject to tribal jurisdiction ("Indian Country") as defined by 18 U.S.C. Section 1151.

c. "Excise Tax" means those taxes imposed by the state of Kansas on retail sales (K.S.A. 79-3601 et seq.); cigarettes (K.S.A. 79-3301 et seq.); motor fuels (K.S.A. 79-3401 et seq.); special fuels (K.S.A. 79-3474 et seq.) and tobacco products (K.S.A. 79-3370 et seq.).

2. No Kansas excise tax shall be imposed on any transaction occurring on the Iowa Tribe Reservation so long as such transaction is subject to an Iowa Tribe tax (the "Tribal Tax") imposed thereon which is no less than the following tax amounts:

a.	Motor and Special Fuels	$.05/gal.
b.	Cigarette and Tobacco Products	$.04/pkg.
c.	General Sales	2%
d.	New Construction Materials	4%

3. A fully executed copy of the enacting resolution of the governing body of the Iowa Tribe imposing any such "Tribal Tax" shall be filed with the Department of Revenue.

4. This Compact does not affect or pertain to any local option tax on sales levied by a county on transactions occurring on the Reservation.

5. The Department of Revenue may review tax collection records of the Iowa Tribe at the Iowa Tribe general offices upon request in writing by the Secretary of the Department of Revenue mailed to the Iowa Tribe at least fourteen (14) days in advance.

6. The State of Kansas hereby relinquishes the jurisdiction it may have to levy and collect Excise Taxes on sales by merchants on the Iowa Tribe Reservation subject to the following conditions:

a. Such merchants are authorized by the Iowa Tribe to do business on the Reservation;

b. Such merchants are paying Tribal Taxes to the Iowa Tribe;

c. Such excise taxes imposed by the Iowa Tribe shall not be less than those specified in Paragraph 2 of this Compact.

7. The Iowa Tribe agrees to diligently pursue collection of any Tribal Tax imposed on merchants transacting business on the Reservation.

8. In the event the Department enters into a tax collection or similar compact with any other Indian tribe which agreement is more favorable to that tribe (in the view of the Iowa Tribe) than this Compact, Department will amend this Compact to adopt the "more favorable provisions" if requested to do so by the Iowa Tribe.

9. In no event shall this Compact be construed to be a waiver of the sovereignty of the Iowa Tribe or a concession that the State of Kansas has any jurisdiction whatsoever on the Iowa Reservation.

10. This Compact shall be null and void and of no further force or effect if the Congress of the United States or the United States Supreme Court declares that states may not impose excise taxes on transactions involving nonIndians occurring on Indian reservations.

11. This Compact shall be for a term of five (5) years from the effective date hereof; provided, however, this agreement shall be renewable for an additional five (5) year term by mutual consent of the parties.

12. This Compact shall be binding and effective only after it has been approved by the Iowa Tribe by its Executive Committee, the Governor, the Kansas Secretary of Revenue and the Kansas Legislature.

Witness our hand and seal this 19th day of September, 1991.

"IOWA TRIBE"

IOWA TRIBE OF KANSAS AND NEBRASKA

By: /s/ Leon Campbell
Leon Campbell, Chairman

By: /s/ Aquila Tilton
Aquila Tilton, Secretary

APPROVED:

IOWA TRIBE OF KANSAS AND
NEBRASKA EXECUTIVE COMMITTEE

By: /s/ Leon Campbell
Leon Campbell

By: /s/ John Kreitzer
John Kreitzer

By: /s/ Aquila Tilton
Aquila Tilton

By: /s/ George W. Ogden
George Odgen

By: /s/ Harvey Frederick
Harvey Frederick

APPROVED:

/s/ Joan Finney
Joan Finney, Governor
State of Kansas

/s/ Mark Beshears
Mark Beshears, Secretary
Kansas Department of Revenue

**TAX COMPACT BETWEEN THE
KICKAPOO NATION AND THE
KANSAS DEPARTMENT OF REVENUE**

This Agreement is made and entered into this 19th day of SEPTEMBER, 1991, by and between the Kickapoo Nation and the Department of Revenue of the State of Kansas (hereinafter "Department").

WHEREAS, the Kickapoo Nation exists in a treaty relationship with the United States of America; and

WHEREAS, President Bush on June 14, 1991, issued an American Indian policy statement which reaffirmed the government-to-government relationship between Indian Nation tribes and the Federal Government; and

WHEREAS, Kickapoo Nation Self-Determination must be based on economic Self-Sufficiency; and

WHEREAS, it is agreed by and between the Kickapoo Nation and Department that it is mutually beneficial to the parties to cooperate in matters relating to taxation; and

WHEREAS. the Legislature of the State of Kansas has authorized tax collection agreement's between the Kickapoo Nation and Department to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction; and

WHEREAS, the Kickapoo Nation has enacted tribal government tax laws and is currently collecting taxes on sales of the following: general merchandise, cigarettes, tobacco products, motor fuels and special fuel; and

WHEREAS, the Kickapoo Nation provides programs and services which are funded in part from existing tribal taxes which programs and services include the following:

(1) Operation and maintenance of a Tribal Judicial Court system benefiting both tribal and non-tribal members.

(2) Construction and maintenance of roadways and bridges benefiting both tribal and non-tribal members.

(3) Maintenance of an independent tribally-operated water plant and distribution system benefiting tribal and non-tribal members.

(4) Operation of a volunteer fire department benefiting tribal and non-tribal residents of the Reservation and surrounding local communities and areas.

(5) Operation of low income housing benefiting tribal and non-tribal members.

(6) Operation of the Kickapoo Nation School (K-12) for tribal and non-tribal members.

(7) Operation of a drug and alcohol half-way house rehabilitation center benefiting tribal and non-tribal members.

(8) Operation of the Kickapoo Nation Social Services Program benefiting tribal and non-tribal members.

WHEREAS, if many of the above-described programs and services were not provided by the Kickapoo Nation, Kansas would very likely be called upon to fund and provide the services; and

WHEREAS, the geographic location of the Kickapoo Nation Reservation is such that it is believed that businesses operated on the Reservation do not compete directly with businesses operated by merchants in surrounding areas and communities.

NOW, THEREFORE, the parties agree as follows:

1. *Definition of Terms.* As used in this agreement, the following terms shall mean the following:

a. "Kickapoo Nation" means the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas referred to as the Kickapoo Nation, an Indian Nation Tribe recognized by the Congress of the United States.

b. "Reservation" means those areas subject to tribal jurisdiction ("Indian Country") as defined by 18 U.S.C. Section 1151.

c. "Excise Tax" means those taxes imposed by the state of Kansas on retail sales (K.S.A. 79-3601 et seq.); cigarettes (K.S.A. 79-3301 et seq.); motor fuels (K.S.A. 79-3401 et seq.); special fuels (K.S.A. 79-3474 et seq.) and tobacco products (K.S.A. 79-3370 et seq.).

2. No excise tax of Kansas or its governmental subdivisions shall be imposed on any transaction occurring on the Kickapoo Nation reservation so long as such transaction is subject to a Kickapoo Nation tax (the "Tribal Tax") imposed thereon which is no less than, the following tax amounts:

a.	Motor and Special Fuels	$.06/gal.
b.	Tobacco Products	$.10/pkg.
c.	General Sales	2%

3. A fully executed copy of the enacting resolution. of the governing body of the Kickapoo Nation imposing any such Tribal Tax shall be filed with the Department of Revenue.

4. The State of Kansas hereby relinquishes the jurisdiction it and its governmental subdivisions may have to levy and collect Excise Taxes on sales by merchants on the Kickapoo Nation Reservation subject to the following conditions:

a. Such merchants are authorized by the Kickapoo Nation to do business on the Reservation;

b. Such merchants are paying Tribal Taxes to the Kickapoo Nation;

c. Such excise taxes imposed by the Kickapoo Nation shall not be less than those specified in Paragraph 2 of this Compact.

5. The Kickapoo Nation agrees to diligently pursue collection of any Tribal Tax imposed on merchants transacting business on the Reservation.

6. The Kickapoo Nation agrees to certify on forms provided by the Department that it is collecting the taxes set forth in Paragraph 2. Upon request by the Department, the Kickapoo Nation shall provide supporting certification documentation at the Department's offices not more than twice a year.

7. In no event shall this Compact be construed to be a waiver of the sovereignty of the Kickapoo Nation or a concession that the State of Kansas has any jurisdiction whatsoever on the Kickapoo Reservations.

8. This Compact shall be null and void and of no further force or effect if the Congress of the United States

or the United States Supreme Court declares that states may not impose excise taxes on transactions involving nonindians occurring on Indian reservations.

9. This Compact shall be for a term of five (5) years from the effective date hereof; provided, however, this compact shall be renewable for an additional five (5) year term or a longer period of time by mutual consent of the parties.

10. This Compact shall be binding and effective only after it has been approved by the Kickapoo Nation Tribal Council, the Governor, and the Kansas Secretary of Revenue.

Witness our hand and seal this 19th day of SEPTEMBER, 1991.

KICKAPOO NATION TRIBAL COUNCIL

By: /s/ Steve Cadue
Steve Cadue, Chairman
of the Kickapoo Nation

By: /s/ Verna R. Simon
Verna R. Simon; Secretary
of the Kickapoo Nation

APPROVED:

/s/ Joan Finney
Joan Finney, Governor
State of Kansas

/s/ Mark Beshears
Mark Beshears, Secretary
Kansas Department of Revenue

TAX COMPACT BETWEEN THE PRAIRIE BAND OF POTAWATOMI NATION AND THE STATE OF KANSAS

This Compact is made this 10th day of January, 1992, by and between the Prairie Band of Potawatomi Indians (hereinafter the "Tribe") and the State of Kansas (hereinafter) the "State"):

Whereas, The Tribe is a federally recognized Indian tribe, duly-organized pursuant to the Constitution and By-Laws of the Prairie Band of Potawatomi Indians, approved by the Secretary of the Interior on February 19, 1976, as amended thereafter, and

Whereas, both the Tribe and the State recognize the duty of each to negotiate with the other on a government-to-government basis pursuant to our national Indian policy of economic, social and political self-determination for Indian tribes; and

Whereas, the Supreme Court has repeatedly recognized the inherent sovereign power of Indian tribes to impose and collect taxes upon business operating within their reservation boundaries; and

Whereas, it is agreed between the Tribe and the State that it is to their mutual benefit to cooperate in matters relating to taxation; and

Whereas, the Legislature of the State of Kansas has authorized tax collection agreements between the State and Indian tribes to eliminate problems which result from tribal and state taxation and regulation of the same event or transaction, and to ensure a reasonable competitive balance of sales by vendors on reservations and those off reservations;

Now therefore, the Tribe and the State agree as follows:

1. Definition of Terms. As used in this Compact each of the following terms shall have the following meaning, unless the context clearly indicates a different meaning:

(a) "Reservation" means all Indian country as defined by 18 U.S.C. § 1151 which subject to the jurisdiction of the Tribe.

(b) "Excise tax" means, respectively, a tax on sales (KS-A. 79-3601 *et seq.*); tax on cigarettes (K.S.A. 79-3301 *et seq.*); a tax on motor fuels (K.S.A. 79-3401 *et seq.*); a tax on special fuels (K.S.A. 79-3474 *et seq.*); and a tax on tobacco products (K.S.A. 79-3370 *et seq.*); and any of the foregoing five taxes established by tribal law.

(c) "Local option tax" means any tax imposed by a Kansas country upon any transaction occurring on the Reservation or upon any other product or activity upon the Reservation.

2. State Taxes Not to be Imposed. No state excise tax or local option tax shall be imposed upon any transaction with a non-Indian purchaser which occurs on the Reservation while the Tribe shall have in effect and shall actively impose, collect and enforce upon any such transaction, an excise tax of not less than sixty percent (60%) of the rate of such state excise tax for each such excise tax included within the definition of that term in subsection 1(b) of this Compact.

3. Proof of Tribal Tax Ordinance. Such tribal tax shall be deemed to be enacted only when a copy of the tribal tax ordinance, together with a fully executed copy of

the enacting resolution of the Tribal Council, is filed with the Tribal Secretary; within ten (10) days thereafter, a copy of the tribal tax ordinance and an executed copy of the enacting resolution of the Tribal Council shall be filed with the Department of Revenue.

4. Tribal Contribution to Banner Creek Reservoir Project. The Tribe agrees to pay to Jackson County a tribal contribution to the Banner Reservoir Project in the sum of $16,000.00 per annum.

5. Violation of Tribal Tax Law; Enforcement of Penalties for Violations.

(a) Notice of Probable Violation to Tribal Council. Whenever it shall come to the attention of the Director of Revenue that any person is probably conducting business on the Reservation without collecting and remitting tribal taxes as required by this Compact, the Director shall notify the Tribal Council of such violation and of the need for tribal enforcement of tribal penalties for such violation in Tribal Court of such offender either civilly or, in case such person is an enrolled member of any Indian tribe, civilly or criminally or both, as the Tribal Council may determine.

(b) Enforcement of Penalties for Violations in Tribal Court. At any time it deems a violation of tribal tax laws to have occurred, or within thirty (30) days of receipt of any such notice of violation from the Sate, the Tribal Council shall file an action in Tribal Court to enforce tribal penalties against such person either civilly or criminally or both, as the Tribal Council may determine.

(c) State Inspection of Tribal Tax Records. In such enforcement action in Tribal Court, all tribal tax records with respect to pertinent transactions on the Reservation involving the person against whom tribal penalties are being enforced shall be made evidence of the Tribal Court and as such shall be open to inspection by the State at any time.

6. Terms of Relinquishment of State Jurisdiction. The State hereby relinquishes whatever jurisdiction it may have to impose and collect excise taxes as herein defined from any merchant upon any transaction with a non-Indian purchaser which occurs on the Reservation, subject to the following conditions:

(a) Such merchant shall be authorized to do business on the Reservation pursuant to applicable tribal law;

(b) Such merchant shall pay such corresponding excise taxes to the Tribe; and

(c) Such excise taxes imposed and collected by the Tribe shall be not less than sixty percent (60%) of corresponding excise taxes imposed by the State on any such transaction outside the Reservation.

7. Term of Compact: Renewal. The term of this Compact shall be for a term of five (5) years from the effective date hereof; provided, however, that this Compact shall be renewable for additional five (5) year terms by mutual consent of the Tribe and the State as follows:

(a) Periodic Review. The provisions of this Compact shall be subject to review at five (5) year intervals dating from the effective date of this Compact. One hundred eighty (180) days prior to the expiration of any such five (5) year term, either party to this Compact may notify

the other of provisions which it believes require review or amendment. Such notice shall be in writing and shall be sent by certified mail to the Chairman of the Tribe, the Governor of the State or any other appropriate governmental official of either.

(b) Notice of Need to Resolve Issues. Upon receipt of such notice by either party, the parties shall engage in good faith efforts to resolve the issues identified in the notice. The parties shall have the balance of the 180-day period within which to negotiate. The Tribe and State may agree to extend the 180-day period without prejudice to the rights of either party.

(c) Termination for Failure to Resolve Issues. In the event the parties are unable to resolve the issues identified in the notice within the balance of the 180-day period or any extension thereof upon the expiration of such period, this Compact shall terminate.

(d) Termination for Substantial Breach. Either party may terminate this Compact upon a substantial breach by the other party regardless of any other provision of this Compact. Upon identification of what either party believes to be a substantial breach of the terms of this Compact, such party shall notify the other party in writing, via certified mail, return receipt requested, as to the nature of the substantial breach. The party issuing such notice shall refrain from terminating this Compact until 30 days have elapsed from receipt of such notice by the other party.

8. Tribal Sovereign Immunity Not Waived. Nothing contained in this Compact shall be deemed to waive the sovereign immunity of the Tribe to suit in any court, state or federal.

9. Effective Date. This Compact shall be binding and effective only after it has been approved by the Governor of Kansas, and the Tribe by written resolution of the Tribal Council; the last such date shall be the "effective date" hereof.

Witness our hand and seal this 10th day of January, 1992.

/S/
Mark Beshears, Director
Department of Revenue

/S/
George Wahquahboshkuk,
Chairman
Prairie Band of
Potawatomi Indians
Tribal Council

/S/
Grace Wahwassuck,
Secretary

Approved:

/S/
Joan Finney
Governor of Kansas